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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/844,843	04/27/2001	Claudiu D. Pruteanu	20010142.ORI	2768
23595	7590	02/28/2006	EXAMINER	
NIKOLAI & MERSEREAU, P.A. 900 SECOND AVENUE SOUTH SUITE 820 MINNEAPOLIS, MN 55402			KEENAN, JAMES W	
			ART UNIT	PAPER NUMBER
			3652	

DATE MAILED: 02/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/844,843

**Applicant(s)**

PRUTEANU ET AL.

**Examiner**

James Keenan

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 20 December 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 51-53, 55-57, 59-62 and 64-66 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 51-53, 55-57, 59-62, 64-66 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 51-53, 55-57, 59-62, and 64-66 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In independent claims 64 and 65, it is not clear what is meant by "the necessary available clearance space" or "in relation to previous pivoting devices", in that the metes and bounds of the claim are not clearly set forth.

4. Claim 64 is rejected under 35 U.S.C. 103(a) as being unpatentable over Christenson (US 5,931,628) in view of Brandt (US 5,851,100), both previously cited.

This rejection is set forth in prior Office action, mailed 4/22/05, paragraph 2, and repeated in the 9/16/05 Office action.

Applicant again argues that the arm arrangement 140 of Christenson shown in the figure 8 embodiment is not disclosed in combination with the container grabber 160 shown in figures 7, 9, and elsewhere. Applicant is again directed to col. 7, lines 10-12 in which, referring to the arm arrangement 140 of figure 8, it is disclosed that "any lifting arm ... may be used with any container grabbing ... apparatus".

Applicant also argues that the arm arrangement 140 is curved only to accommodate mounting and that it does not reduce the distance between the container holder and pivot joint (and thus, presumably, the lift and dump radius). This is not persuasive because the claim does not require the lift and dump radius to be reduced in relation to anything in particular (the limitation "previous pivoting devices" is considered meaningless in the context of a claim and is given no patentable weight). The curved structure of arm 140 at the very least reduces the lift and dump radius relative to what it otherwise would be if the same arm was straightened.

5. Claim 59 is rejected under 35 U.S.C. 103(a) as being unpatentable over Christenson in view of Brandt, as applied to claim 64 above, and further in view of Duell et al (US 6,123,497) and Tordenmalm et al (US 4,896,582), both previously cited.

This rejection is set forth in prior Office action, mailed 4/22/05, paragraph 3, and repeated in the 9/16/05 Office action.

In response to applicant's argument that Duell and Tordenmalm are nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Duell is in the same field of endeavor, and Tordenmalm is pertinent to the same problem because it relates to slowing down a piston in a hydraulic cylinder as the piston approaches the end of its travel.

6. Claims 51, 55, 56, 60, 61, 65, and 66 are rejected under 35 U.S.C. 103(a) as being unpatentable over Christenson in view of Brandt and Sizemore et al (US 5,505,576), previously cited.

This rejection is set forth in prior Office action, mailed 4/22/05, paragraph 4, and repeated in the 9/16/05 Office action.

In response to applicant's argument that the rotary actuator of Sizemore does not operate the arm through a complete lift and dump cycle, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). Applicant further argues that reduction of operating room is of no concern in the Sizemore apparatus. This is immaterial because that reference was not used to teach a reduction of operating room, but merely an alternate means of rotating the lifting arm. The issue of reduced operating room, to whatever extent it may be given patentable weight, is considered to be fairly taught by the base reference Christenson, as noted above.

7. Claims 52, 53, 57, and 62 are rejected under 35 U.S.C. 103(a) as being unpatentable over Christenson in view of Brandt and Sizemore et al, as applied to claims 51, 55, 56, 60, 61, 65, and 66 above, and further in view of Duell et al.

This rejection is set forth in prior Office action, mailed 4/22/05, paragraph 5, and repeated in the 9/16/05 Office action.

8. Applicant's arguments filed 12/20/05 have been fully considered but they are not persuasive. All arguments have been addressed above.

9. Applicant's amendment necessitated the new grounds of rejection (112/2<sup>nd</sup> paragraph) presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to James Keenan whose telephone number is 571-272-6925. The examiner can normally be reached on (schedule varies).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eillen Lillis can be reached on 571-272-6928. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
James Keenan  
Primary Examiner  
Art Unit 3652

jwk  
2/21/06